

## **OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION**

### **ADVANCE NOTICE OF PROPOSED RULEMAKING**

The State Superintendent of Education, pursuant to section 3(b) of the District of Columbia State Education Office Establishment Act of 2000, effective October 21, 2000 (D.C. Law 13-176; D.C. Official Code § 38-2602 (b)(3) (2012 Repl.)), sections 11 and 16 of the District of Columbia Nonresident Tuition Act, approved September 8, 1960, 74 Stat. 854, Pub. L. 86-725, as added by section 4012(c) of subtitle B of title IV of the Fiscal Year 2005 Budget Support Act of 2004, effective December 7, 2004 (D.C. Law 15-205; D.C. Official Code § 38-308 (a) (2012 Repl.)), section 101(d) of the Public School Enrollment Integrity Clarification and Board of Education Honoraria Amendment Act of 2004, effective April 13, 2005 (D.C. Law 15-348; D.C. Official Code § 38-2906.02(c) (2012 Repl.)) and the District of Columbia Public Schools and Public Charter School Student Residency Fraud Prevention Amendment Act of 2012, effective May 9, 2012 (D.C. Law 19-126; D.C. Official Code § 38-312.01 (c) (2012 Repl.)), hereby gives notice of rulemaking amending in its entirety chapter 50 (Residency Verification for Public Schools and Public Charter Schools) of subtitle A (Office of the State Superintendent of Education) of title 5 (Education) of the District of Columbia Municipal Regulations (DCMR).

The Office of the State Superintendent of Education (OSSE) is responsible for the collection of non-residency tuition payments. Residency verification involves collaboration with Local Education Agencies and parents required to verify student residency each school year.

The purpose of these rules is to clarify policies and procedures required to ensure District residents have access to available space at local schools, and that when extra space is available, non-resident students enrolled in a D.C. public school pay non-resident tuition.

The Superintendent further gives notice of the intent to take final rulemaking action to adopt this amendment. Pursuant to D.C. Official Code § 38-313, the proposed rulemaking will be submitted to the Council of the District of Columbia for a 45-day period of review, excluding Saturdays, Sundays, holidays, and days of Council recess, and final rulemaking action will not be taken until the later of thirty (30) days after the date of publication of this notice in the D.C. Register or Council approval of the amendment.

The rules address the student residency verification and requirements related to non-resident students. A public hearing to review the proposed rules will be held by the State Board of Education on Wednesday, February 5, 2014, at 4:30 p.m. at 441 4th Street NW, Room 1114, Washington, D.C. 20001.

Comments on this advance notice of rulemaking will be accepted through February 5, 2014.

**Chapter 50 (Residency Verification for Public Schools and Public Charter Schools) of subtitle A (Office of the State Superintendent of Education) of title 5 (Education) of the District of Columbia Municipal Regulations (DCMR) is amended in its entirety to read as follows:**

## **CHAPTER 50            STUDENT RESIDENCY**

### **5000            GENERAL POLICY**

- 5000.1            All school aged children, who establish bona fide residency in the District of Columbia, may attend a District of Columbia public school or District of Columbia public charter school (collectively a "District public school") free of charge.
- 5000.2            A student's residency is based upon the primary residence of the student's parent, legal guardian, custodian or other primary caregiver, or of the student if the student is an adult or emancipated minor. A residency determination shall be made annually for each student by the local education agency (LEA) of enrollment.
- 5000.3            A resident student shall have priority over a non-resident student seeking admission to a District public school including without limitation, a selection process based upon selective criteria, lotteries, school waiting lists and date of application for enrollment.
- 5000.4            A non-resident student enrolled in a District public school shall pay non-resident tuition consistent with provisions of this chapter.
- 5000.5            A homeless student is not required to provide proof of residency as a condition of enrollment in a District public school. The appropriate school official shall notify OSSE when a student is homeless in order to ensure that the student receives the appropriate services and assistance.
- 5000.6            Policies and procedures related to residency verification and enrollment shall be available to the public and shall be posted on OSSE and LEA websites.

### **5001            STUDENT RESIDENCY VERIFICATION**

- 5001.1            Each student seeking to attend a District public school or receiving funding from the District of Columbia to attend another school shall confirm residency annually consistent with this chapter.
- 5001.2            In the absence of evidence to the contrary, residency for students under eighteen (18) years of age and not emancipated, shall be presumed to be the bona fide residence of the student's parents, legal guardian, custodian or other primary caregiver as otherwise amended.
- (a)            In the event the parents live apart, the term "parent" for residency verification shall mean the parent with whom the child regularly resides.

- (b) A student residing with a court-appointed guardian, custodian or other primary caregiver who has established bona fide residence in the District of Columbia shall be presumed to be a resident.

5001.3 Students entitled to enrollment without payment of non-resident tuition include:

- (a) A student who is in the care or control of a parent, guardian, custodian, or other primary caregiver who is a resident of the District of Columbia;
- (b) A student who is a resident of the District of Columbia and does not have a living parent, guardian, custodian, or other primary caregiver;
- (c) A student who is a ward of the District of Columbia;
- (d) A student who is homeless;
- (e) A student who is living with his or her spouse, when the spouse is eighteen (18) years of age or older and is a resident of the District of Columbia; or
- (f) An adult or emancipated minor who is otherwise eligible for admission to a District public school and a resident of the District of Columbia. For the purposes of this chapter, the residence of an adult or emancipated minor is the address of the student's place of residence, not the address of the student's parent, custodian, guardian or "other primary caregiver".

## **5002 RESIDENCY VERIFICATION TIMING**

5002.1 Student residency shall be determined annually.

5002.2 The residency status of each student enrolled in a District public school shall be verified at the public school attended by the student, not earlier than April 1 and not later than October 5 or ten (10) days following enrollment, whichever is later<sup>1</sup>, for the school year that begins on or after July 1 of each year. An adult student or a minor student's parent, legal guardian, custodian or other primary caregiver may agree to submit residency verification prior to the October 5<sup>th</sup> deadline.

5002.3 A LEA shall confirm District residency when a decision is made to fund a student at another school outside the District of Columbia public school system, prior to student's initial enrollment, and annually thereafter.

5002.4 At the time a student transfers from a District public school to another District public school, the receiving LEA is responsible for confirming residency and collecting the residency verification documents from the sending LEA, or from the student, student's parents, legal guardian, custodian or "other primary

caregiver" directly if residency verification documentation submitted is not available from the sending LEA. The receiving LEA shall maintain the residency verification documentation.

### **5003 RESIDENCY VERIFICATION DOCUMENTATION**

5003.1 A parent, guardian, custodian, "other primary caregiver," or adult student shall provide documentation in compliance with District of Columbia laws, including D.C. Official Code §§ 38-308 through 38-310 (2001).

5003.2 Documentation to establish or verify residency may be presented in the following manner:

- (a) Provided to the school by the parent, guardian, custodian, primary care giver, an adult student, in person or by that person's appointed representative, as defined in this chapter; or
- (b) Pursuant to other OSSE approved policies or procedures.

5003.3 Parents, legal guardians, custodians, or "other primary caregiver" or adult students shall be responsible for signing a residency verification form certifying their residency in the District of Columbia on or before the student's enrollment or the acceptance of an application to attend a school (whichever occurs first), including an acknowledgement confirming responsibility for tuition payment for any period of time the student is determined to be a non-resident while enrolled and attending a District public school.

### **5004 OTHER PRIMARY CAREGIVER**

5004.1 A primary caregiver (other than the student's parent, legal guardian or custodian) seeking to enroll a student in a District public school shall provide: a) documentation that establishes his or her status as an "other primary caregiver", and b) documentation that establishes the caregiver's residency status.

5004.2 The "other primary caregiver" status of each person seeking to enroll a student in a school shall be established with documents set forth in D.C. Official Code § 38-310.

5004.3 A student's residency may be based upon that of an "other primary caregiver" upon satisfactory evidence that primary care and support are provided by that individual with whom the student resides in the District of Columbia, and that the student's actual parent or guardian is unable to supply such care, custody, and support.

### **5005 EXCEPTIONAL CIRCUMSTANCES**

- 5005.1 Exceptional circumstances may exist when documentation normally required to verify residency or status as "other primary caregiver" is not otherwise available.
- 5005.2 OSSE may create policies and procedures to address such exceptional circumstances. The policies and procedures for exceptional circumstances shall be designed to facilitate rather than hinder the residency verification process.

## **5006 NON-RESIDENT STUDENTS**

- 5006.1 Students who qualify as residents of the District of Columbia have priority over non-residents seeking admission to District public schools. A LEA may enroll a non-resident student after a determination is made that space is available at a District public school because no District resident is seeking admittance for the same grade at that location for the same period of time.
- 5006.2 In the event a greater number of students apply for admission to a District public school with a limited number of available spaces, a LEA shall give priority to District residents.
- 5006.3 Upon request, a LEA shall provide to OSSE or its designee documentation to support residency or necessary to facilitate non-residency investigations.
- 5006.4 Upon request, a LEA shall provide to OSSE or its designee waiting lists that were in effect or established during the time period(s) a nonresident student attended or was enrolled at its school.
- 5006.5 Adult non-resident students or the parents, legal guardians, custodians or other primary caregiver of a non-resident student attending a District funded school shall be responsible for tuition payment. The non-resident tuition amount shall be paid upon enrollment, and a non-resident student shall not attend school until tuition is paid in full. .
- 5006.6 A non-resident student attending a District public school shall be officially enrolled at the school and reported on the school's roster as a non-resident student.

## **5007 NON-RESIDENCY INVESTIGATIONS, HEARINGS AND FINAL DETERMINATIONS**

- 5007.1 Failure to provide adequate proof of residency by October 5 of the school year or (10) days following enrollment, whichever is later, may require OSSE or its designee to investigate the residency status of a student or take other steps to confirm the student's residency status.

- 5007.2 Evidence of District residency that appears to be satisfactory does not prevent OSSE or school officials from seeking further information to confirm the student's residency or the "other primary caregiver" status of the adult enrolling the student.
- 5007.3 OSSE shall investigate allegations of non-residency and summarize the results of the investigation in a written report.
- 5007.4 OSSE shall make such information available to the LEA agencies, the District of Columbia Office of the Inspector General and the Office of the Attorney General for the District of Columbia, upon request.
- 5007.5 When an investigation results in a finding by OSSE that the student is not a resident of the District of Columbia, OSSE shall provide the adult student or the parent, guardian, custodian or "other primary caregiver" of the minor student written notification of the finding and an opportunity for review as specified in this chapter. The written notification is mailed by OSSE to the last known address of the individual, as provided to OSSE by the LEA.
- 5007.6 OSSE shall issue a written notification to the student's parent, guardian, custodian or "other primary caregiver," or to the adult student, with a copy to the LEA. The written notification shall:
- (a) Include the basis for finding that the student is a non-resident;
  - (b) Notify the student's parent, guardian, custodian or "other primary caregiver," that they have ten (10) school days from the date the written notification is issued to: (1) respond to OSSE with requested documentation; and (2) request a review of the non-residency finding by the District of Columbia Office of Administrative Hearings ("OAH"), and include information about submitting a request for review to the OAH;
  - (c) Request a home visit to prove residency or other documentation to prove residency;
  - (d) Explain that the student may remain enrolled at the school until a final administrative decision is made;
  - (e) Indicate that the LEA has discretion to allow a non-resident student an opportunity to remain at the school, provided: (1) the non-resident tuition is paid for the current school year and for any other period the student has attended the school as a non-resident; and (2) the school does not have a resident student on the waiting list seeking a space at the school for the same grade level as the non-resident student.

- (f) Explain that the student will be un-enrolled from school within ten (10) school days after the date of the written notification unless OSSE receives a response to the notification; and
- (g) State that, in the event the student is voluntarily or involuntarily un-enrolled from school, the District shall take action to collect a pro-rated amount of the student's non-resident tuition reflecting the student's time at the school if arrangements have not already been made with the or LEA to pay the amount.

5007.7 Requests for review of OSSE non-residency findings must be filed with the OAH not later than ten (10) school days after the date the written notification is issued. If a request for review is not received within a timely manner, and none of the other corrective actions listed in § 5007.6 of this chapter are confirmed to have been taken on behalf of the student, the finding of non-residency and the proposed decision to un-enroll the student from school shall become the final administrative determination.

5007.8 Upon receiving notice from OSSE that a final administrative determination has been made that a student is a non-resident and an appeal of the final administrative determination has not been timely requested, the LEA shall:

- (a) Update the student records, including as appropriate: the LEA data systems; state level reporting and data systems including without limitation, the Student Longitudinal Educational Data (SLED) system and the Specialized Education Data System (SEDS); and Public Charter School Board data system;
- (b) Collect the payment of back tuition for time spent at the school and provide the option to either withdraw the student from the school or maintain enrollment upon receipt of the full tuition amount within ten (10) school days; and
- (c) Send the entire amount of the non-resident tuition to OSSE upon receipt.

5007.9 OSSE shall provide notice of an OAH hearing and final decision to the LEA.

5007.10 Any action requiring withdrawal of a non-resident student with an Individual Education Program shall be consistent with the requirements of the Individuals with Disabilities Education Act and other applicable laws and regulations.

5007.11 A matter involving non residency may be referred to the Office of the Attorney General through OSSE for collection of tuition payments. Investigations may also result in referrals to the Office of the Attorney General or Office of Inspector General with regard to allegations involving persons who knowingly supply false information in connection to residency verification.

## **5008 NON-RESIDENT TUITION PAYMENTS**

- 5008.1 A non-resident student enrolled in a District funded school shall be subject to non-resident tuition payments consistent with this chapter.
- 5008.2 Non-resident tuition payments equal the UPSFF, all relevant weights associated with the UPSFF; the per pupil facilities allowance for public charter schools or other OSSE approved tuition rates; and any other supplemental allocations.
- 5008.3 Non-resident tuition payment shall be made payable to "*D.C. Treasurer*" and delivered to OSSE by the LEA or the school within five (5) days of receipt. OSSE shall provide the LEA or school with a confirmation that it has received the non-resident tuition payment.
- 5008.4 The District shall not fund a non-resident student under UPSFF until a non-resident student's tuition has been paid in full and transmitted to the OSSE.
- 5008.5 In the event a District public school has already received UPSFF funding for a non-resident student, the District may withhold a portion of the school's subsequent funding, equal to the amount of non-resident tuition previously distributed to the LEA, until the tuition payment for the non-resident student is transmitted to OSSE.
- 5008.6 A LEA shall maintain in a student's permanent file, a written record of tuition payment to be made available during the annual enrollment audit and upon request by OSSE or another government agency for each non-resident student.

## **5009 AUTHORITY**

- 5009.1 These rules are consistent with and based on the District of Columbia Nonresident Tuition Act of 1960, approved September 8, 1960, 74 Stat. 853; Pub. L. 86-724 (D.C. Official Code §§38-301 to 38-313) (2012 Repl.); section 3(b) of the District of Columbia State Education Office Establishment Act of 2000, effective October 21, 2000 (D.C. Law 13-176; D.C. Official Code § 38-2602 (b)(3) (2012 Repl.)); section 4012(c) of subtitle B of title IV of the Fiscal Year 2005 Budget Support Act of 2004, effective December 7, 2004 (D.C. Law 15-205; D.C. Official Code § 38-308 (a) (2012 Repl.)); section 101(d) of the Public School Enrollment Integrity Clarification and Board of Education Honoraria Amendment Act of 2004, effective April 13, 2005 (D.C. Law 15-348; D.C. Official Code § 38-2906.02(c) (2012 Repl.)), and the District of Columbia Public Schools and Public Charter School Student Residency Fraud Prevention Amendment Act of 2012, effective May 9, 2012 (D.C. Law 19-126; D.C. Official Code § 38-312.01 (c) (2012 Repl.)).

## **5099 DEFINITIONS**



**"Adult Student"** – A student who is eighteen (18) years of age or older, or who has been emancipated from parental control by marriage, operation of statute, or the order of a court of competent jurisdiction.

**"Appointed Representative"** – An individual acting on behalf of a person, pursuant to his or her written authorization, in presenting documentation to establish or verify the District residency of the person seeking to enroll the student.

**"Chartering Authority"** – A District of Columbia entity authorized to grant charters for the establishment of charter schools, pursuant to either the District of Columbia School Reform Act of 1995, approved April 26, 1996 (110 Stat. 1321; D.C. Official Code § 38-1802.01 (2012 Repl.) *et seq.*), or the Public Charter School Act of 1996, effective May 29, 1996 (D.C. Law 11-135; D.C. Official Code § 1701.01 (2001) *et seq.*) as amended.

**"Custodian"** – A person to whom physical custody has been granted by a court of competent jurisdiction.

**"District of Columbia Public Schools or DCPS"** – The District of Columbia Public Schools system, not including public charter schools.

**"District Funded School(s)"** – Includes any public school, public charter school, private or public school outside of the District of Columbia receiving funding from the District of Columbia.

**"District Public School(s)"** – Includes any school within the District of Columbia Public Schools system or any District of Columbia public charter school.

**"District Law"** – In this chapter refers to the specific provisions of the District of Columbia Official Code referred to in this chapter, including without limitation Sections 38-301 through 312 and other applicable statutes or regulations.

**"Enroll and Enrollment"** – Registration of a student with a LEA and/or school.

**"Guardian"** – A person who has been appointed legal guardian of a student by a court of competent jurisdiction.

**"Homeless"** – An individual who lacks a fixed, regular, and adequate nighttime residence. These individuals shall include children and youth who are of eligible school age:

- (a) Sharing the housing of other persons due to loss of housing, economic hardship or similar reasons;
- (b) Living in motels, hotels, trailer parks, or camping grounds due to lack of alternative adequate accommodation;

- (c) Living in emergency or transitional shelters, (including D.C. transitional housing);
- (d) In a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings;
- (e) Living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings;
- (f) Living in a hospital due to abandonment;
- (g) Awaiting foster care placement;
- (h) Migratory children, as defined in section 1309 of the Elementary and Secondary Education Act of 1965, who qualify as homeless because they live in circumstances described above;
- (i) Unaccompanied youth, including youths who are not in physical custody of a parent or guardian, who qualify as homeless because they live in circumstances described above.

**"Local Educational Agency or LEA"** – The District of Columbia Public School system and/or any individual or group of public charter schools operated under a single charter in the District of Columbia.

**"Private or Non-District Public School"** – An out of state private or public school or a private school within the District receiving tuition payments from the District of Columbia in order to provide educational and related services to a student.

**"Office of the State Superintendent of Education or OSSE"** – The state level agency established by Chapter 26 of Title 38 of the D.C. Official Code.

**"Other Primary Caregiver"** – A caregiver to a student as described in, District of Columbia Official Code § 38-310 who submits evidence that he or she is the primary caregiver of the student.

**"Parent"** – A natural parent, stepparent, or parent by adoption that has custody or control of a student, including joint custody.

**"Public Charter School"** – A District of Columbia public school authorized by a chartering authority.

**"School"** – A public charter school, a school within the District of Columbia Public Schools system, a school in another state or a nonpublic school in the District of Columbia enrolling a student funded by the District of Columbia.

**"UPSFF"** – Uniform Per Student Funding Formula, as set forth in the "Uniform Per Student Funding Formula for Public Schools and Public Charter Schools Act of 1998", effective March 26, 1999 (D.C. Law 12-207; D.C. Official Code §§ 38-2901 *et seq.* (2012 Repl.))

**"Waiting List"** – A roster of students maintained by the LEA of students seeking enrollment.

Persons desiring to comment on this advance notice should file comments in writing by mail or hand delivery to the Office of the State Superintendent of Education, Attn: Jamai Deuberry re: "Contested Residency Regulations," 810 First Street, NE 9<sup>th</sup> Floor, Washington, DC 20002 [(202) 727-6436] or to [Jamai.Deuberry@dc.gov](mailto:Jamai.Deuberry@dc.gov) with subject "Attn: Jamai Deuberry, Contested Residency Regulations," or both, not later than February 5, 2014. Additional copies of this proposal are available from the above address and on the Office of the State Superintendent of Education website at [www.osse.dc.gov](http://www.osse.dc.gov).